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July 19, 2017
CELA

Mr. Jeff S. Jordan
Assistant General Counsel
Office of Complaints Examination
and Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 7250

Dear Mr. Jordan:

This letter responds on behalf of Rob Quist, and Rob Quist for Montana and Linda Howard in her official capacity as Treasurer (the "Committee") to the Commission's notification that it received a complaint (the "Complaint") alleging that Mr. Quist and the Committee violated the Federal Election Campaign Act (the "Act") and Federal Election Commission (the "Commission") regulations.

As described below, based upon the lack of evidence provided in the Complaint, and based upon evidence uncovered during our own investigation of the matter, the Commission should find that there is no reason to believe that either Rob Quist or the Committee has violated the Act or any of the Commission's regulations.

I. Background and Allegations

This Complaint was filed with the Commission by Joe Dooling, Chairman of the Lewis & Clark County Republican Central Committee (the "Complainant") on May 24, 2017. Complainant has filed this Complaint with the Commission against Mr. Quist, the Committee, and approximately 100 additional respondents.

The Complaint alleges that on May 20, 2017, a Montana newspaper, the Bozeman Daily Chronicle, published in its online newspaper that the newspaper's mailed version would soon include an insert in "certain" newspapers that would be delivered in the State of Montana, to endorse Mr. Quist in the May 25, 2017 special election for the vacant United States House of Representatives at-large seat (the "Newspaper Insert").

The Complaint alleges that, according to Ms. Seabring Davis, identified as being the organizer for the Newspaper Insert, the "determination of where to place the Newspaper Insert

was determined through coordinated communications with the Quist campaign".¹ The Complaint *attempts to substantiate this claim by quoting the Ms. Davis' statement in the Bozeman Daily Chronicle that "[t]he insert's distribution in areas in southwest and northwest Montana are places where, consulting with the Quist campaign, the group thought they were likely [to] reach undecided voters. . . ."*²

The Complaint alleges that together, individuals contributed \$10,000 to the costs of the Newspaper insert, the website, and other "undisclosed costs related to the project."³

With respect to Mr. Quist and the Committee, the Complaint alleges that:

- The Newspaper Insert constituted a coordinated public communication under the Act and triggered 48-hour reporting requirements to the Commission under 11 C.F.R. § 109.20(a) and 11 C.F.R. § 109.21(d)(2).
- The Newspaper Insert triggered 48-hour reporting requirements for Mr. Quist and the Committee to the Commission under 11 C.F.R. § 104.5(f).
- The Newspaper Insert exceeded the contribution limits under 11 C.F.R. § 110.1.
- There has been "no valuation of . . . direct or in-kind contributions" from the writers or photographers of the Newspaper Insert as required under 11 C.F.R. § 104.7.⁴

Further, not only does the Complaint make these allegations based solely upon Ms. Davis' comment about "'consulting' with the Quist campaign", but the Complaint goes further to even allege that each respondent named in the Complaint "utterly, willfully and knowingly disregarded the provisions of federal law enacted to protect the public from dark money, [and] shadowy and unaccountable organizations. . . ."⁵ This claim of Mr. Quist or the Committee "willfully and knowingly" violating the Act lacks any form of evidence.

To be certain, the only evidence that Complainant relies on to support the claim that Mr. Quist and the Committee have violated the Act and Commission regulations is from a comment an individual made to a reporter about "consulting" with the campaign about the distribution of a newspaper insert that was disseminated in Montana.

¹ Complaint at 3.

² Complaint at 3 (emphasis added).

³ Complaint at 3.

⁴ Complaint at 4-5.

⁵ Complaint at 3, 6.

During our investigation of the matter, we confirmed that *neither Mr. Quist and the Committee nor an agent of either Mr. Quist or the Committee coordinated with Ms. Davis or any other party involved with the creation or dissemination of the Newspaper Insert as that term is defined by the Commission's regulations.* As a result of our investigation into the facts of this matter, it is our understanding that Ms. Davis' quote in the article regarding "consulting with the Quist campaign" was referring to Ms. Joanne Gardner, a *volunteer* for the Quist campaign. Ms. Gardner did not play any significant role in the campaign, and it is our understanding that Ms. Gardner hosted a fundraiser for the campaign, and may have done some volunteer work with the campaign.

Any communication between Ms. Gardner and Ms. Davis or any other party involved with the insert's creation or dissemination could not have constituted a "coordinated communication" as defined under the Act because Ms. Gardner was not an agent of Mr. Quist or the Committee. No communication she had with Ms. Davis or any other individual with regard to the Newspaper Insert was authorized by Mr. Quist, the Committee, or an agent of either Mr. Quist or the Committee. In addition, it is our understanding that Ms. Davis did not discuss the placement or targeting of the Newspaper Insert with Mr. Quist, or any employee or Agent of the campaign.

As such, and as provided below, since this communication was not coordinated, it was independently made and was disseminated by the writers, and it was not an in-kind contribution to the Quist campaign; therefore, Mr. Quist and the Committee have not violated any of the Act's requirements with respect to the allegations made in the Complaint.

II. The Newspaper Insert was not a Coordinated Communication

The Newspaper Insert is not a coordinated communication because it does not satisfy the Commission's three-prong test for a coordinated communication. A communication is "*coordinated*" with a "*candidate, an authorized committee, a political party committee, or an agent of any of the foregoing*" if the communication is "paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee", *and meets at least one of the Commission's conduct standards, and at least one of the Commission's content standards*⁶

First, we do not contest that the Newspaper Insert was paid for in whole by persons other than Mr. Quist and the Committee.⁷ However, next, to meet the "conduct standard" and satisfy a second prong of the test, the communication would require the occurrence of any one of the following elements:

⁶ 11 C.F.R. § 109.21.

⁷ Since our investigation into the facts of this case prove that the Newspaper Insert was not a "coordinated communication" the "conduct prong" is not satisfied, this Response will not provide an analysis covering the "content prong". See 11 C.F.R. § 109.21(c).

1. The "Request or suggestion".

"(i) The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or

(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion."⁸

2. "Material involvement".

". . . A candidate, authorized committee, or political party committee is *materially involved in decisions* regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite."⁹

3. "Substantial discussion".

". . . The communication is created, produced, or distributed after one or more *substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee.* A discussion is substantial within the meaning of this paragraph *if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.*"¹⁰

⁸ 11 C.F.R. § 109.21(d)(1).

⁹ 11 C.F.R. § 109.21(d)(2) (emphasis added).

¹⁰ 11 C.F.R. § 109.21(d)(3) (emphasis added) (note that additional elements would be a "common vendor"; "former employee or independent contractor"; or the "dissemination, distribution, or replication of campaign material"; however nothing in the Complaint indicates these would be relevant).

The Complaint specifically alleges that there was "material involvement" with regard to the "intended audience for the communication" or "the specific media outlet used for the communication" but fails to offer evidence for this. Instead, the Complaint merely quotes Ms. Davis for her statement that the Quist campaign had been "consult[ed]" with in regard to the dissemination of the insert.

Further, as noted above, our own investigation reveals that the individual Ms. Davis had communication with regarding the placement of the Newspaper Insert was Ms. Joanne Gardner, a volunteer for the campaign who was not an agent of Mr. Quist or the Committee. To be an "agent" under the Act for purposes of a coordinated communication, Ms. Gardner would have to have possessed "*actual authority, either express or implied*", from Mr. Quist or the Committee to engage in specifically enumerated activities on behalf of Mr. Quist or the Committee, and then to have engaged in those activities on behalf of Mr. Quist or the Committee.¹¹ *To be certain, any communication that Ms. Davis may have made with Ms. Gardner – or any other party – was not requested, suggested or otherwise authorized, either expressly or impliedly by Mr. Quist or his campaign, with regard to the Newspaper Insert.*

III. The Newspaper Insert Was Not a Contribution

As set forth above, the Newspaper Insert was not a coordinated communication, and as such, was "*not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.*"¹² Under the Act, the Newspaper Insert by definition meets the requirements for an "independent expenditure" and was *not* a contribution to the Quist campaign.

¹¹ 11 C.F.R. § 109.3 (emphasis added).

¹² 52 U.S.C. § 30101(17) (emphasis added).

Conclusion

The Complaint bases its claim that there was an in-kind contribution made to the Quist campaign on the statement that the Quist campaign had been "consult[ed]" with on where to disseminate a newspaper insert.¹³ As explained above, our investigation has revealed that the "consulting" described in the complaint occurred between two independent supporters of the Quist campaign, it was *not with Mr. Quist, the Committee, or its employees. As such, the Newspaper Insert was not a coordinated communication, and not an in-kind contribution to the Quist campaign.* Thus, the Commission should find that there is no reason to believe that Mr. Quist or the Committee have violated the Act and close this matter. If you have any questions regarding this Response, our daytime number is (202) 479-1111. You can also reach Neil Reiff at reiff@sandlerreiff.com, or Rachel Provencher at provencher@sandlerreiff.com.

Sincerely,



Neil P. Reiff

Rachel Provencher

¹³ Complaint at 3.